

Revised
HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan

8 July 1949

UNITED STATES OF AMERICA VS NOBORU HASHIYAMA

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Noboru Hashiyama, tried at Yokohama, Japan, from 22 December 1948 to 29 December 1948, by a Military Commission appointed by paragraph 1, Special Orders No. 285, Headquarters Eighth Army, United States Army, dated 22 December 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Noboru Hashiyama	DATE OF CONFINEMENT: 26 November 1948
AGE: 29	DATE OF ARRAIGNMENT: 22 December 1948
RESIDENCE: Hyogo Pref, Himeji-Shi, Chiyoda-Machi, Yagi 731	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Single	PERIOD OF TRIAL: 22 December 1948 to 29 December 1948
RELATIVES: Father, mother, 2 sisters, brother.	DATE OF SENTENCE: 29 December 1948
EDUCATION: Graduate of Higher Industrial School	SENTENCE: CHL for life
VOCATION: Clerk	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Entered Army in March 1941; assigned Western Army Hq March 1943 to October 1945	

2. Synopsis of Charge, Pleas, Findings and Legal Sufficiency:

<u>Charge and Specification</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Ch: Accused, during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes
Sp: That on or about 15 August 1945, the accused did willfully and unlawfully kill an unidentified American PW by beheading him (As amended, R 7, 10).	NG	G	Yes

Revised

3. Summary of the Evidence:

a. For the Prosecution:

This is a companion case to Case #288, Tomomori et al, and #362, Akamine et l. The commission took judicial notice of PX 1 through 71 of Case #288 and of all of Case #362 (R 4, 7). Judicial notice was also taken of direct and cross-examination of Yokoyama in Case #288 (R 10). PX 1 through 71 of Case #288 are documentary data introduced in an effort to identify the victim herein. Incorporated herein by reference is review in Case #288 which gives a summary of such data and also the background of events leading up to the incident herein involved.

Accused was on 15 August 1945 a first lieutenant in charge of general affairs at Western Army Headquarters (R 7).

After procuring the assent of General Fukushima, Assistant Chief of Staff, Western Army, Colonel Sato, Chief of Air Defense Section, Western Army Headquarters and in charge of captured enemy fliers, told Major Kusumoto of the Adjutant Section to execute the remaining prisoners, leaving the details to him. At about noon of 15 August 1945, personnel of the headquarters assembled and had read to them the Imperial Rescript whereby the Potsdam Declaration was accepted (Ex 23). Thereafter, Kusumoto informed this accused and others that executions would be performed, that secrecy was to be observed and ordered this accused to take members of the Air Defense Section and officers of the guerrilla unit, together with the prisoners, out to Aburayama, the site of the execution. Accused phoned Lt. Maida of the Air Defense Section and transmitted Kusumoto's orders. Maida selected those to participate including this accused. About seventeen prisoners were trucked out to the site, this accused also being on the truck. Upon arrival the executioners divided themselves into four groups and allocated the prisoners among them, this accused being in charge of one group. The prisoners were blindfolded and had their hands tied behind their backs. This accused executed the third prisoner in his group by decapitating him with a sword (Ex 2, p 10; 3, p 2; 4, p 16, 5, p 10; 6, p 42-50; 8, p 17; 22; 9, p 5, 7; 10 (his own); 11 (his own); 12 (his own); 13, p 3; 14, p 3-4, 6; 15, p 2-4; 16, p 3; 17, p 3; 18, p 2). None of the fliers who were executed had been tried (Ex 2, p 9; 4, p 17).

Introduced as Exhibit 20 was a copy of "Military Law of Punishment of Crew Members of Raiding Enemy Planes" effective November 1942 imposing penalties for indiscriminate bombing by enemies of Japan. Offenders thereunder were to be punished by death or life sentence or imprisonment for not less than ten years depending upon the circumstances. Executions were to be by firing squad.

b. For the Defense:

The President of the commission informed the accused that he had the right to make a sworn statement, an unsworn statement or to remain silent and if he remained silent, the prosecution could comment upon his failure to take the stand. The accused elected to remain silent. No evidence was offered in his behalf.

4. Opinion:

The commission was established by proper authority and had jurisdiction over the accused and of the offenses alleged. There is no evidence that the accused was not sane on the occasion of the commission of the offenses charged or at the time of trial. He was ably represented by Japanese counsel and American advisory counsel.

Briefs submitted by prosecution and defense have been carefully read and

Admitted
considered. It is concluded that no error adversely affecting the rights of the accused was committed and the record is legally sufficient to support the findings. The execution by sword rather than by the legal method of firearms is a signpost of illegality (U. S. vs Okada, Case #289, P 91).

There is evidence indicating that this accused executed two fliers (Ex 9, p 7, 8; 13, p4, 5; 15, p 3). Nonetheless there is credible evidence that he had only executed one and the finding of the commission to this effect should not be disturbed. Likewise contradicted by credible evidence was Yakumaru's statement that this accused on 15 August had gone to Kusumoto and asked whether it was permissible to execute the remaining PW's (Ex 4, p 16). Among others, Kusumoto's statement refutes the foregoing (Ex 5, p9).

5. Recommendations:

Petitions for clemency filed by friends and relatives were carefully considered. There were no letters of clemency from any member of the commission.

This accused was sentenced to confinement at hard labor for life; while legal, this sentence is deemed to be excessive. The record amply reveals that the army continued to function after 15 August and the accused followed superior orders. The duty to follow superior orders did not cease with the reading of the Rescript. Accordingly it is recommended that the ends of justice will be adequately served if the sentence be modified to provide for confinement at hard labor for twenty years.

6. Action:

Attached is a form of action designed to effect the foregoing recommendation.

GEORGE GUROW
Reviewer
Judge Advocate Section

Restricted

I concur in general except as to the sentence. Approval of the life sentence is recommended. The actions of Hashiyama are in a similar category to those of Alamine, Case #362. He was an officer and knew that beheading indicated illegality. It is certain that he knew that there was no penalty for testing an illegal order. Even refusal to obey a legal order under the situation existing at the time of the 13 August 1945 killings could subject him to less than two years imprisonment. Yet without inquiry and without objection he actively engaged in voluntarily participating with a pick-up detail of casual personnel in the concealment killings which he said he believed to be consummated because Japan lost the war. He exhibited his guilty conscience by hiding and eluding discovery for a long period after the war.

An alternate proposed action to implement this recommendation is attached.

ALLAN R. BROWNE
Lt Colonel JAGC
Army Judge Advocate